



MTC ASSOCIATE NEXUS MODEL STATUTE

DRAFT 10/12/12

MTC Sales and Use Tax Subcommittee For Discussion Purposes Only

A person making sales of tangible personal property or services taxable under this article ("seller") shall be presumed to be soliciting business, and have nexus with this state, through the in-state activities of an independent contractor, or other representative if the seller enters into an agreement, directly or indirectly, with a resident of this state under which the resident, for a commission, or other consideration based on completed sales, directly or indirectly refers potential customers, whether by a link on an internet website or otherwise, to the seller, if during the preceding year the cumulative gross receipts from sales by the seller to customers in the state who are referred to the seller by all residents with this type of an agreement with the seller is in excess of \$_____. [optional: and the cumulative gross receipts from sales by the seller to all customers in the state is in excess of \$_____.] This presumption may be rebutted by proof that the resident with whom the seller has an agreement did not engage in any solicitation in the state on behalf of the seller that would satisfy the nexus requirement of the United States constitution during the year in question. An agreement under which a seller purchases advertisements from a resident of this state, is not an agreement described in this section unless the advertisement revenue paid to the resident in this state consists of commissions or other consideration that is based upon sales of tangible personal property. Nothing in this section is intended to diminish this state's requirements for establishing nexus under [insert your state's statute]. Nothing in this section is intended to diminish a vendor's requirement to register [insert your state's sales and use tax statute(s)]. This Act shall become effective as of the date of enactment.

Definitions

Resident

Any individual who maintains a permanent place of abode in this state is a resident. Permanent place of abode is a dwelling place maintained by a person, or by another for him, whether or not

owned by such person, on other than a temporary or transient basis. The dwelling may be a home, apartment or flat; a room including a room at a hotel, motel, boarding house or club; a room at a residence hall operated by an educational, charitable or other institution; housing provided by the Armed Forces of the United States, whether such housing is located on or off a military base or reservation; or a trailer, mobile home, houseboat or any other premises.

Any corporation incorporated under the laws of [insert your state]; and any corporation, association, partnership, or other pass-through entity, or other entity that maintains a place of business in the State, or otherwise has nexus in the State for purposes of this act; is a resident.

Advertisement

The term “advertisement” means a logo, icon, writing, or image disseminated electronically for the purpose of inducing, or that is likely to induce, directly or indirectly, the purchase of taxable goods or services from the seller. An advertisement does not link a purchaser to the seller’s website.

Seller

A seller includes, but is not limited to, an entity, or pass-through entity, affiliated with a seller within the meaning of Section 1504 of the Internal Revenue Code.¹

Regulation

If the written agreement between the seller and the resident specifies that the resident may not engage in solicitation, then this presumption may be rebutted for any tax year by providing to the [Department] a signed statement from the resident attesting that he or she did not in fact engage in any solicitation during that tax year.

¹ Section 1504 (26 U.S.C. §1504) defines an affiliated group. <http://www.law.cornell.edu/uscode/text/26/1504>